

1 Memorandum of Points and Authorities, the Declaration of Philip J. Smith and its attachments, all
2 records on file with the Court relating to this matter, and any and all argument provided by
3 counsel at the hearing.
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5 DATED: July 9, 2008

SEVERSON & WERSON
A Professional Corporation

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8 By: /s/ Philip J. Smith
Philip J. Smith

9 Attorneys for Plaintiff
Ireta Irby
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Defendant submits this Memorandum of Points and Authorities in support of Defendant's Motion for Attorney's Fees.

I. MEMORANDUM OF POINTS AND AUTHORITIES

A. INTRODUCTION

Plaintiff is the owner and holder of a promissory note, executed and delivered by Defendant. The Parties' promissory note stated that Plaintiff was entitled to an award of attorney's fees if Plaintiff retained legal representation to enforce the promissory note. Plaintiff subsequently retained legal representation to enforce the promissory note. Plaintiff filed suit against Defendant seeking, *inter alia*, attorney's fees pursuant to the terms of the promissory note. Plaintiff successfully obtained a judgment against Defendant, which included an award of attorney's fees pursuant to the terms of the promissory note.

Plaintiff thereafter incurred post-judgment attorney's fees enforcing her judgment against Defendant. Plaintiff now seeks to recover the post-judgment attorney's fees she incurred to enforce her judgment.

B. STATEMENT OF FACTS

On November 17, 1988, Plaintiff obtained a judgment against Defendant in the United States District Court for the Southern District of Texas ("Texas Judgment"). Declaration of Philip J. Smith, ("Smith Decl."), ¶ 4, Exhibit ("Ex.") 3. Plaintiff registered the Texas Judgment in this Court on August 20, 1996 ("California Judgment"). Smith Decl., ¶ 5, Ex. 4.

On January 11, 2008, Plaintiff re-registered the Texas Judgment with this Court ("the Re-Registered Judgment"). Smith Decl., ¶ 6, Ex. 5. Thereafter, Plaintiff took steps to enforce the Re-Registered Judgment.

On January 29, 2008, Plaintiff sought issuance of a writ of execution in connection with the Re-Registered Judgment. Smith Decl., ¶ 7. A writ of execution was entered in this action on February 26, 2008, in the amount of \$393,867.04 (hereafter referred to as the "Writ of Execution"). Smith Decl., ¶ 7, Ex. 6.

On March 7, 2008, an Earnings Withholding Order was issued to Defendant's employer

1 Mechanic's Bank, which is located in Richmond, California (hereafter referred to as the "Earnings
2 Withholding Order"). Smith Decl., ¶ 8, Ex. 7. The Earnings Withholding Order notified
3 Mechanic's Bank of the Re-Registered Judgment, and instructed Mechanic's Bank to begin
4 garnishing Defendant's wages. *Id.*

5 On March 26, 2008, Defendant filed a motion that sought, *inter alia*, to vacate the Re-
6 Registered Judgment. Smith Decl., ¶ 9. On June 25, 2008, this Court issued its order denying
7 Defendant's motion to vacate the Re-Registered Judgment ("June 25th Order"). Smith Decl., ¶ 9,
8 Ex. 8. The June 25th Order thus concluded the Re-Registered Judgment is valid and enforceable.

9 Plaintiff incurred \$13,817.84 in attorney's fees to enforce the Re-Registered Judgment.
10 Smith Decl., ¶¶ 10, 11 and 12, Ex. 9. More specifically, this amount represents Plaintiff's
11 counsel's fees for preparing Writ of Execution and the Earnings Withholding Order as well as
12 successfully opposing Defendant's motion to vacate the Re-Registered Judgment. *Id.*

13 Plaintiff's and Defendant's counsel met and conferred in compliance with Civil Local
14 Rule 54-6(b)(1). Smith Decl., ¶ 13, Ex. 10.

15 On July 9, 2008, Plaintiff filed the present motion for attorney's fees.

16 C. ARGUMENT

17 1. Legal Standard

18 California Code of Civil Procedure Section 685.040 states that "[a] judgment creditor is
19 entitled to the reasonable and necessary costs of enforcing a judgment." Section 685.040 further
20 states that "[a]ttorney's fees incurred in enforcing a judgment are included as costs collectible
21 under this title if the underlying judgment includes an award of attorney's fees to the judgment
22 creditor pursuant to" California Code of Civil Procedure Section 1033.5 (a)(10)(A). California
23 Code of Civil Procedure Section 1033.5 (a)(10)(A), in turn, states that attorney's fees are
24 recoverable, as costs, when authorized by contract, statute or law.

25 Rule 54 of the Federal Rules of Civil Procedure, in conjunction with Civil Local Rule 54-
26 6, governs the procedure for requesting an award of attorney's fees in this Court.

27 2. Plaintiff Incurred Attorney's Fees Enforcing Her Judgment Against 28 Defendant

1 Plaintiff has sought to enforce the Re-Registered Judgment. On February 26, 2008, the
2 Writ of Execution was entered in this action on Plaintiff's behalf. On March 7, 2008, Plaintiff
3 caused the Earnings Withholding Order to be issued to Defendant's employer Mechanic's Bank,
4 notifying it of the Re-Registered Judgment and directing it to garnish Defendant's wages.

5 On March 26, 2008, Defendant filed a motion that sought, *inter alia*, to vacate the Re-
6 Registered Judgment. Plaintiff successfully opposed Defendant's motion to vacate the Re-
7 Registered Judgment.

8 Plaintiff has thus sought to enforce the Re-Registered Judgment through the preparation
9 and issuance of the Writ of Execution and the Earnings Withholding Order, as well as opposing
10 Defendant's motion to vacate the Re-Registered Judgment. Severson & Werson, Plaintiff's
11 counsel, billed Plaintiff \$13,814.87 in attorney's fees, including costs and expenses, to prepare the
12 Writ of Execution, the Earnings Withholding Order and oppose Defendant's motion to vacate the
13 Re-Registered Judgment.

14 As such, Plaintiff incurred \$13,814.87 in attorney's fees to enforce the Re-Registered
15 Judgment.

16 3. The Underlying Judgment Included an Award of Attorney's Fees
17 Authorized by Contract

18 The Re-Registered Judgment is the judgment Plaintiff obtained against Defendant in an
19 action filed in the United States District Court for the Southern District of Texas and captioned
20 *Ireta Irby v. Brooks H. Haden*, Civil Action No. H-88-1781 (hereafter referred to as the
21 "Underlying Civil Action"). Smith Decl., ¶¶ 3, 4, 5, and 6, Ex. 2.

22 Plaintiff's Complaint in the Underlying Civil Action asserts claims against Defendant
23 based upon a promissory note executed and delivered by Defendant (hereafter referred to as "the
24 Promissory Note"). Smith Decl., ¶ 3, Exs. 1 and 2. Plaintiff is the owner and holder of the
25 Promissory Note. Smith Decl., ¶ 2, Ex. 1. The Promissory Note provided that if "this Note is
26 referred to an attorney for collection, whether or not suit is actually filed, [Defendant] will pay
27 additionally a reasonable attorneys' fee of not less the [sic] 10% of the total amount due
28 hereunder, plus all other Court costs and other costs of collection." *Id.*

1 Plaintiff retained an attorney in conjunction with the Underlying Civil Action and
2 Plaintiff's Complaint in the Underlying Civil Action stated that Plaintiff sought an award of
3 attorney's fees pursuant to the Promissory Note. Smith Decl., ¶ 3, Ex. 2.

4 Plaintiff ultimately obtained a judgment against Defendant (previously referred to as the
5 "Texas Judgment") in the Underlying Civil Action. Smith Decl., ¶ 4, Ex. 3. The Texas
6 Judgment, which became the Re-Registered Judgment, includes an award of attorney's fees to
7 Plaintiff pursuant to the terms of the Promissory Note. Smith Decl., ¶¶ 4 and 6, Exs. 3 and 5. As
8 such, the Re-Registered Judgment includes an award of attorney's fees authorized by contract.

9 **D. CONCLUSION**

10 Plaintiff incurred attorney's fees enforcing her Re-Registered Judgment against Defendant,
11 by preparing and issuing the Writ of Execution and the Earnings Withholding Order, as well as
12 opposing Defendant's motion to vacate the Re-Registered Judgment. The Re-Registered
13 Judgment included an award of attorney's fees authorized by contract—namely, the Parties'
14 Promissory Note. As such, Plaintiff is eligible to recover the post-judgment attorney's fees she
15 incurred to enforce the Re-Registered Judgment, pursuant to Rule 54 of the Federal Rules of Civil
16 Procedure, Civil Local Rule 54-6, California Code of Civil Procedure section 685.040 and
17 California Civil Code section 1033.5. Plaintiff therefore respectfully requests that the Court grant
18 Plaintiff's present motion for attorney's fees.

19 DATED: July 9, 2008

20 SEVERSON & WERSON
A Professional Corporation

21
22 By: /s/ Philip J. Smith
Philip J. Smith

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24 Attorneys for Plaintiff
Ireta Irby